



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Consider Indemnification Agreement Regarding Taco Truck Cook-Off  
**MEETING DATE:** June 14, 2011  
**PREPARED BY:** Director of Parks, Recreation and Cultural Services

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**RECOMMENDED ACTION:** Consider indemnification agreement regarding Taco Truck Cook-Off.

**BACKGROUND INFORMATION:** The Lodi Arts Commission (LAC) is hosting a Taco Truck Cook-Off event at the Smart & Final store parking lot, located at 215 East Lodi Avenue on Saturday, June 18, 2011, from 11:00 a.m. – 3:00 p.m.

This event is to coincide with the celebration of the "Project Lodi Arts" mosaic sidewalk project. The LAC purchased special event insurance with the assistance of the Lodi Arts Foundation naming the City of Lodi, Smart & Final Corporation and the owners of the Smart & Final property each as additional insured. The amount of coverage is \$1,000,000 for each occurrence and \$2,000,000 general aggregate. On Wednesday, June 8, 2011, the Smart & Final legal department sent a request asking the City to execute an indemnity agreement prior to their signing the permit application. The City Attorney has reviewed the proposed indemnification agreement and does not object to the execution of the agreement, assuming the Council is willing to backstop any uninsured or under-insured liabilities arising out of the event. Indemnification agreements such as the proposed require Council approval and the matter has been brought forward for Council consideration accordingly. The proposed indemnification agreement and special event insurance are attached.

**FISCAL IMPACT:** Not Applicable

**FUNDING AVAILABLE:** Not Applicable

A handwritten signature in black ink, appearing to read "James M. Rodems".

James M. Rodems  
Director of Parks, Recreation and Cultural Services

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APPROVED:

A handwritten signature in black ink, appearing to read "Konradt Bartlam".

Konradt Bartlam, City Manager

## INDEMNITY AGREEMENT

This Indemnity Agreement ("Agreement") is entered into on June 8, 2011 by The Lodi Arts Commission, located at 125 S. Hutchins Street, Lodi, CA 95240 (hereinafter either referred to as "LAC" or "Indemnitor"), and Smart & Final Stores LLC, a California limited liability company, with its corporate offices at 600 Citadel Drive, Commerce, CA 90040 ("S&F") with reference to the following facts:

**A.** S&F operates over 250 retail, nonmembership warehouse stores in California, Arizona and Nevada. One of these stores is located at 215 E. Lodi Avenue, Lodi, California 95240 (hereinafter "Premises"), which is more particularly described in Exhibit "A" attached hereto. The owners of the Premises upon which S&F operates its store are Geraldine F. Steinberg, Dolores L. Borowitz, and the Dolores Lee Borowitz Trust (hereinafter collectively "Owner").

**B.** On Saturday, June 18, 2011 from on or about 11:00am until approximately 3:00pm, LAC plans to hold a Taco Cook Off as a dedication and celebration of the mosaic plaques which are part of the Lodi Avenue project. As part of this dedication and celebration, LAC has requested that S&F and Owner allow the taco trucks participating in the Taco Cook Off to park in the parking lot on the Premises.

**C.** LAC has provided S&F with certificates of insurance which indicate that Owner and S&F have been added as additional insureds to LAC's commercial general liability coverage for the event scheduled for June 18, 2011. However, as part of S&F's and Owner's agreement to allow LAC to utilize the Premises' parking lot for the Taco Cook Off, they have also requested that LAC indemnify Owner and S&F, as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LAC agrees as follows:

1. LAC agrees to indemnify, defend and hold Owner and S&F and their officers shareholders, board of directors, managers, members, partners, and employees harmless from and against any and all claims, demands, damages, losses, liabilities, actions, causes of action, suits, judgments, costs and expenses (including litigations costs and reasonable attorneys' fees) arising out of, relating to, or connected with, (i) any act or omission of LAC, their employees, representatives, agents, subcontractors, independent contractors, officers, that damages the Premises and/or causes personal injury due to the negligence of LAC or anyone operating under or on its behalf (including but not limited to the taco truck owners, employees and independent contractors), or (ii) any breach of any warranty or representation made or given to Owner and/or S&F by LAC in this Agreement.

3. Governing Law. This Agreement shall be construed in accordance with and governed by the statutes, decisions, and other laws of the State of California.

4. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

5. Amendment and Modification. No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound. No waiver

of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

6. Assignment. LAC shall not transfer, assign or delegate its rights or duties hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

7. Expenses; Attorneys' Fees. Each party shall bear the expenses (including, without limitation, attorneys' fees) incurred by it in connection with the negotiation, execution and delivery of this Agreement. In the event any party takes legal action (including arbitration or mediation) to enforce any of the terms of this Agreement, the party who is determined to be the prevailing party shall be entitled to recover its reasonable expenses, including attorneys' fees for pretrial investigation, at trial, and on appeal, incurred in such action.

8. Severable Provisions. If any of the provisions of this Agreement are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions, and any partially unenforceable provisions to be the extent enforceable, shall nevertheless be binding and enforceable.

9. Notice. All notices, requests, information and replies being given, sent or required to be given with respect to this Agreement must be in writing and must be sent by nationally recognized overnight courier service, such as, but not limited to, Federal Express, by certified mail with return receipt requested, or by express mail, in each case with charges billed to sender proper postage prepaid as applicable and will be deemed given on the date received (or refused) when addressed to S&F and/or LAC at the addresses set forth in the first paragraph of this Agreement or to such other addresses as the parties may designate in writing.

LODI ARTS COMMISSION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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<b>ACORD<sub>TM</sub> CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 05/27/2011												
PRODUCER (503)227-0491 FAX (503)227-0927 Gales Creek Insurance Services, Inc. 800 NW 6th, Suite 335 Portland, OR 97209		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED The California Joint Powers Risk Management Authority For LODI ARTS COMMISSION 2333 San Ramon Valley Blvd., Suite 250 San Ramon, CA 34583		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURERS AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A: Midwest Employers Casualty Company</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Midwest Employers Casualty Company		INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADDL	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Host Liquor Included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CLA1018387	04/01/2011	05/01/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADY INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 1,000,000
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
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		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

LODI ARTS COMMISSION IS AFFORDED COVERAGE AS A NAME INSURED FOR A FESTIVAL < 500 ATTENDANCE TO BE HELD AT CITY OF LODI IN LODI, CA ON 06/18/2011 INCLUDING SET UP AND TEAR DOWN. THE CERTIFICATE HOLDER BELOW IS AFFORDED COVERAGE AS AN ADDITIONAL INSURED.

### CERTIFICATE HOLDER

CITY OF LODI,  
 and its members, officers, directors, agents, volunteers,  
 employees and officials.  
 221 WEST PINE STREET  
 LODI, CA 95240

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
 Brigitt Whitescarver/BRIGIT

*Brigitt Whitescarver*

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SMART & FINAL PROPERTIES I LLC C/O SMART & FINAL INC.  
 600 CITADEL DRIVE  
 COMMERCE, CALIFORNIA 90040

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GERALDINE F. STEINBERG, DOLORES L. BOROWITZ,  
 AND THE DOLORES LEE BOROWITZ TRUST  
 600 CITADEL DRIVE  
 COOMERCE, CALIFORNIA 90040

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AUTHORIZED REPRESENTATIVE

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*Brigitt Whitescarver*